

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: JUL 26 1996

Person to Contact:

Contact Telephone Number:

Refer Reply to:

Employer Identification
Number:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for to exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] in [REDACTED]. The purposes for which the corporation was formed are as follows:

(a) To protect, conserve, steward, and promote the parks, roadways, and other easements in [REDACTED] shown on filed [REDACTED] subdivision maps of [REDACTED] and [REDACTED] and conveyed through covenanted agreements through the estate of [REDACTED]. Note: See "reservation" properties on filed maps [REDACTED] and [REDACTED] in [REDACTED] along with the covenanted agreements written "to run with the land" found in approximately [REDACTED] deeds between [REDACTED] and [REDACTED] beginning with [REDACTED] and [REDACTED].

(b) To foster, encourage, and promote the fullest use and enjoyment of the [REDACTED] parks and other covenanted easements by [REDACTED] community and their guests.

(c) To maintain a non-partisan democratic caucus-process membership organization of [REDACTED] residents to discuss and resolve issues, oversee and allocate funds, and build community as specified in the Bylaws of the organization. Voting membership will be limited to [REDACTED] landowners or certified proxies as set forth in the Bylaws of the organization.

(d) To enter into and/or support any litigation which either (1) is explicitly to protect the rights of [REDACTED] landowners to the use of the land-grant parkland and/or other easement arising from the [REDACTED] covenants; or, (2) is for the purposes of mutual conservation of [REDACTED] scenic, recreational, and/or natural resources and is allowable under [REDACTED] of the not-for-profit corporation laws of [REDACTED].

(e) [redacted] will seek to conserve [redacted] title for the "reservation" lands under [redacted] order to facilitate conservation and stewardship [redacted] is not possible. [redacted] will work closely with [redacted] titleholders of the "reservation" properties to [redacted] the covenanted agreements are respected.

(f) To seek recognition for [redacted] as a National Historic Site by the Federal government of the United States of America and coordinate and promote any programs which may benefit [redacted] community from such recognition.

(g) To seek financial assistance through grants, fund raising and private donations for the promotion and maintenance of the limited park system in [redacted].

(h) To publish a newsletter and quarterly magazine and sponsor celebrations and events to enhance community awareness and to promote and celebrate the spectacular natural beauty of [redacted].

A booklet containing the charter, constitution and bylaws, submitted with the application gave the following information:

An introduction that informs that all of Montauk was conferred to one individual. Upon his death, his heirs subdivided sections of their property and deeded out parcels or "reservations". These reservations had covenants attached to the land forever and included right of way to roadway and beach area. As disclosed in the introduction, the corporation is to act as trustee of those rights and to ensure that every landowner has a source of information, and "to provide an effective corporate executive to administer and protect our rights as Montauk property owners."

The charter informs that the purposes of the corporation includes the protection, conservation, stewardship and promotion of the parks, roadways, easements and other common resources in [redacted] granted through the estate of the original owner. It states that the "intention of the organization in all cases is to retain the maximum liberty and empowerment with the individual landowners themselves, to bind us effectively to our common purpose...."

The constitution and bylaws inform that membership is opened to all [redacted] landowners and residents. However, only the landowners have the right to vote.

The information submitted with your application discloses that:

[redacted] ([redacted]) is a landowner's association established to care for and protect our common private property rights and interest in land-grant parkland reserved by deed for our common use and to provide environmental stewardship of our fragile peninsula.

██████████ is tended to be primarily a park corporation. Our parks will be maintained and promoted; events will be scheduled and staged; our ongoing relationship with the State parks office will be established. These activities will begin as soon as the membership is engaged.

██████████ will enter into litigation to recover our reservation properties into trust and protect our water supply. The reservation properties and other easements will be recovered into trust and managed by ██████████.

██████████ has been established as a non-partisan- democratic caucus process membership organization. This form of organization is necessitated because the rights to the reservation properties are in favor of all ██████████ property owners.

All of the parks and easements to be managed are on the peninsula of ██████████. ██████████ intends to maintain a professional staff, including but not limited to the officers, groundskeepers, and parks police.

Part II, line 14, of your 1023 application informs that "It is the purpose of the corporation to protect the common rights and interest of ██████████ property owners - the taxpayers. In that these responsibilities overlap with those of our elected officials, it can be expected that there will be frequent dialogue both publicly and privately between the officers of the corporation and our elected officials."

The organization published ██████████ which discusses the history of ██████████ and the rights of the landowners. On page 7 of ██████████ in the section entitled How ██████████ Works For You, the organization refers to itself as "a property owners' association established to be effective in promoting and stewarding our common real property interest in ██████████." It informs that the first mailing is going out to ██████████ property owners. ██████████ will "protect our water supply from overburdenment and depletion." The organization as a "park corporation, will be in place to administer and protect the ██████████ and roadways for our most profitable and enjoyable use."

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

Section 1.501(c)(3)-1(c)(3)(i) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Section 1.501(c)(3)-1(c)(3)(ii) of the Regulations states "An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise."

Section 1.501(c)(3)-1(c)(3)(iii) further defines an "action" organization as one which participates or intervenes directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office....Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of or written statements or the making of oral statements on behalf of or in opposition to such a candidate.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

IRC section 501(c)(3) precludes exemption for an organization which engages in political activity. This is an absolute prohibition. There is no requirement that the political activity be substantial.

Your organization is an action organization established for the private benefit of [REDACTED] property owners and is primarily formed to protect the rights of the landowners. To be exempt pursuant to IRC 501(c)(3) an organization must be engaged in activities that substantially further public interest rather than private interests.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

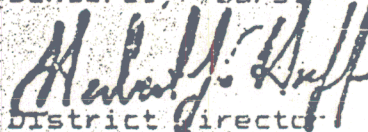
If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,


District Director

Enclosure: Publication 892